

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
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)
Interconnection and Resale) CC Docket No. 94-54
Obligations Pertaining to)
Commercial Mobile Radio)
Services)

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COMMENTS OF ALLTEL MOBILE COMMUNICATIONS, INC.

ALLTEL Mobile Communications, Inc. ("ALLTEL Mobile")¹ submits its comments in response to the Commission's Second Notice of Proposed Rule Making² ("Second Notice") in the above-captioned proceeding. In support thereof, the following is respectfully set forth.

ALLTEL Mobile fully supports the Commission's conclusion to forbear at this time from imposing burdensome resale and interconnection requirements on CMRS carriers and to instead rely upon market mechanisms in the competitively evolving CMRS market to regulate the relationships among carriers. The Commission correctly observes at paras. 2 and 29 of the Second Notice, that given both the nascency of the CMRS market and the rapid pace at which CMRS technology is developing, it is simply too early in the service's life to mandate CMRS-to-

¹ ALLTEL Mobile Communications, Inc., a CMRS licensee of the Commission, is a wholly owned subsidiary of ALLTEL Corporation and a leading provider of cellular radio telephone service.

² See Second Notice of Proposed Rule Making in CC Docket No. 94-54, FCC 95-149 (Released April 20, 1994)

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CMRS interconnection. There is no record of abusive denial of interconnections among facilities-based CMRS providers, nor is there sufficient data yet available to determine whether CMRS-to-CMRS traffic volumes would be sufficient to justify mandated interconnection. In such instances, the Commission is justified in deferring to the best business judgements of the carriers themselves as to both the need for interconnection and the form it takes.

Market-based solutions are preferred with respect to both technological and economic aspects of interconnection issues. At such time as the CMRS-to-CMRS marketplace develops sufficient call volume, protocols for linking PCS and cellular switches will be demanded by the licensees themselves. Until that time, the public switched network will continue its role of providing ubiquity and reasonable interconnection to all carriers, including CMRS carriers.

With respect to policing interconnection disputes, the Commission has aptly reminded CMRS carriers that, as common carriers, they are required to provide communications services upon reasonable request pursuant to Section 201 of the Communications Act. In the limited instances where the market fails and an unreasonable denial of interconnection occurs, the aggrieved party may, as the Commission notes, avail itself of the Section 208 complaints process. ALLTEL Mobile notes that, given the evolving nature of the CMRS marketplace, a case-by-case adjudicatory approach to interconnection controversies is, in fact, the preferable manner of regulation. Such an approach would, on one hand, afford the Commission the opportunity to render limited decisions on discrete facts, while on the other hand, provide the Commission with greater flexibility to respond to both technological and market changes than would otherwise be

available through broad notice and comment rule making proceedings.³

ALLTEL Mobile also supports the Commission's tentative conclusion that no action is required at this time with respect to regulation of roaming services. As noted by various commenters and the Commission, the requirements to provide service under Section 22.901 of the rules may be broad enough to foster the provision of roaming services without imposing unnecessary costs on carriers. CMRS carriers must be permitted to continue to protect their subscribers from both fraud by temporarily discontinuing service, where appropriate, and unreasonable roaming rates. To the extent the Commission mandated roaming requirements, a carrier's ability to negotiate market-based roaming rates with other carriers, including PCS providers, as well the carrier's option to refrain from dealing with carriers charging unfavorable roaming rates, would be severely hampered. The net result would be less subscriber protection.

ALLTEL Mobile concurs with the Commission's tentative conclusion to extend to all CMRS providers the general obligation to permit resale of service by non-facilities based carriers unless there is a showing that such resale is either technically or economically unfeasible for a specific class of CMRS providers. With respect to the resale by facilities-based carriers during the build-out of their systems, ALLTEL Mobile believes that such obligations should end either after the passing of a sunset period or at such time as the carrier is "fully operational." A carrier should be considered fully operational at such time as it meets the first threshold for the PCS build out requirement under Section 24.203 of the rules. Further, should a sunset be established, the Commission should additionally either: 1) engage in periodic market reviews to determine whether

³ Indeed the Commission is currently utilizing the complaints procedure to adjudicate the respective rights of carriers and resellers. See Second Notice at para. 97.

the resale requirement continues to be necessary; or 2) permit carriers to make a showing on a case-by-case basis that the new entrant-reseller has both sufficient subscribership and sufficient facilities to obviate the need for mandated resale. The standard to be used may be analogous to the "substantial service" showing contained in Section 24.203 (b) setting build-out requirements for 10 MHz PCS licensees.

Clearly, ALLTEL Mobile believes some limitation on resale obligations to facilities based carriers is required.³ In the wake of spectrum auctions, the economic determination by a new market entrant as to whether it would be more profitable to resell rather than to invest in facilities is made when one bids at auction. Presumably, where an entity has paid for spectrum, it has chosen to invest in facilities and provide public service in accordance with the obligations of common carriers authorized by the Commission. Any other conclusion runs contrary to the Commission's build-out requirements and would, in essence, permit parties to warehouse spectrum.

ALLTEL Mobile strongly endorses the Commission's refusal to mandate CMRS switched resale. The Commission is correct; the presence of new and fiercely competitive CMRS carriers will provide a significant check on anticompetitive or inefficient market behavior. Aside from making CMRS carriers bear the costs of providing and pricing the level of unbundled interconnection sought by a switched reseller, switched resale requirements are inconsistent with the competitive market structure of the mobile services industry. Particularly in the era of auctions, CMRS carriers must be able to justify their investment in spectrum and earn a fair rate

³ See Second Notice at paras. 90 and 91.

of return given the level of capital put at risk. Switched resellers, by comparison, have invested little risk capital in either spectrum or infrastructure. Yet, the switched resellers are positioned to compete directly with the carrier for the most profitable value-added segments of the wireless services. In essence, forcing facilities-based carriers to both unbundle their networks and shoulder the associated administrative costs is equivalent to providing the wheat to the reseller and the chaff to the carrier.

While resale is a useful stop-gap measure to correct slight malfunctions in the market or remedy "bottle-neck" abuse, it does not enhance the market's overall competitiveness precisely because resellers are not facilities-based competitors. Given the proliferation of facilities based carriers soon to come, the costs of imposing a switched resale requirement are outweighed by the lack of any competitive benefits. Facilities based competition is the preferred method of promoting competition in CMRS services, lower rates to consumers, and facilitating infrastructure deployment.

In conclusion, ALLTEL Mobile supports each of the Commission's tentative decisions. The Second Notice was thoroughly considered by the Commission and represents a well-reasoned and flexible approach to the regulation of a vigorous and increasingly competitive market. Each of the tentative conclusions discussed above should be retained in any final order of the Commission concluding this proceeding.

Respectfully submitted,

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